Abadi Motor Sdn Bhd v Ewwa bt Mohd Yusoff & Ors

HIGH COURT (SHAH ALAM) — APPLICATION FOR JUDICIAL REVIEW NO BA-25–144–11 OF 2016
VAZEER ALAM J
31 OCTOBER 2018

Administrative Law — Judicial review — Application for — Certiorari to quash decision of respondents — Whether decision of respondents amenable to judicial review

Customs and Excise — Seizure — Seizure of vehicle — Offences under ss 17(1), 133(1)(a), 135(1)(g), 135(1)(a) of the Customs Act 1967 — Whether seizure of vehicles, offer to compound offences, imposition of revised duties/taxes and forfeiture of vehicles unlawful and done in contravention of statute — Customs Act 1967

This was an application for judicial review by the applicant who was in the business of importing motor vehicles into the country. The applicant's complaint related to the seizure of several motor vehicles imported by the applicant as well as the imposition of compound for offences committed by the applicant in the process of the importation of these vehicles and also in respect of the imposition of additional duties and taxes by several of the respondents. The individual respondents were all customs officers. The importation of the vehicles involved ports and places of business in Selangor and Sarawak. There were a total of five separate cases/incidents/complaints involved. The applicant claimed, inter alia: (a) an order of certiorari to bring into court and quash the decision of the respective respondents to seize the 17 units of motor vehicles belonging to the applicant; (b) an order of certiorari to bring into court and quash the offer of compound made by the respective respondents in Case No 1, Case No 2, Case No 3 and Case No 4; (c) an order of certiorari to bring into court and quash the decision of the ninth respondent to issue the 15 bills of claim in Case No 5; and (d) an order of mandamus directing the respondent to refund the monies paid by the applicant under the five cases and release the 17 motor vehicles seized under the five cases. The applicant's grounds for the application were that the seizure of the motor vehicles and the offer of compound for the offences were unlawful and done in contravention of statute and that the acceptance of the offer and payment of the compound by the applicant was occasioned by duress and/or undue influence of some of the respondents.

Held, dismissing the application for judicial review:

(1) There was clear averment by the deponents of the several affidavits filed

on behalf of the respondents that there was reasonable cause to suspect that the applicant had committed offences under the Customs Act 1967 ('the Act'). Hence, the court did not find anything untoward or illegal in the respondents' exercise of their powers under s 114(1) of the Act to seize the vehicles (see paras 15–16).

(2) Following investigations, the respondents offered to compound the offences made pursuant to the provisions of the Act and the Customs Regulations 1977. The applicant had accepted the offer of compound for Case No 1, Case No 3 and Case No 4 and paid the compound in full. Such acceptance amounted to an admission of guilt in so far as the offences were concerned. If the applicant did not commit any offence under the Act, then it need not have accepted the offer to compound the offences and paid the fine, and instead it should have challenged the seizure or forfeiture of the vehicles in a court of law. Having failed to do that, it would now be too late in the day to challenge the seizure, payment of compound and forfeiture of the vehicles on flimsy and unsubstantiated averments of duress and undue influence (see paras 19–20).

(3) The applicant had appealed to the Minister for the release of the vehicles, and the Minister had set a condition for the release of the vehicles, namely, that the payment of additional taxes and duties be settled by the applicant. The applicant had failed to pay these additional taxes and duties. The applicant also failed to produce valid approved permits for the importation of these vehicles. Hence, the forfeiture of the vehicles was in accordance to law and well within the statutory powers under the Act (see para 21).

(4) In respect of Case No 5, the 15 bills of claim were based on the revised actual value of these vehicles, which showed the actual duties and taxes payable. The respondents had the power to do so under s 17(1) of the Act, s 30 of the Sales Tax Act 1972 and s 15(1) of the Excise Act 1976. The applicant had settled payment of all these 15 revised claims for duties and taxes, without any protestation. The applicant in its appeal letter to the Minister did not refute that it had under-declared the value of these 15 vehicles. Hence, the action taken by the respondent in this regard was well within their powers accorded by law (see para 22).

(5) The decision of the respondents in respect of the seizure of the vehicles, the offer to compound the offences, the imposition of revised duties/taxes and the forfeiture of the vehicles were not administrative decisions, but were decisions made in the course of criminal investigations and formed part and parcel of criminal proceedings. Hence, the appropriate forum for the applicant to challenge these decisions would be within the criminal jurisdiction of the appropriate courts. Thus, the impugned decisions sought to be challenged were not amenable to judicial review (see paras 25–26).

[Bahasa Malaysia summary

Ini adalah permohonan untuk semakan kehakiman oleh pemohon yang berada dalam perniagaan mengimport kenderaan bermotor ke negara ini. Aduan pemohon berkaitan dengan penyitaan beberapa kenderaan bermotor yang diimport oleh pemohon serta pengenaan kompaun untuk kesalahan yang dilakukan oleh pemohon dalam proses pengimportan kenderaan-kenderaan ini dan juga berkenaan dengan pengenaan duti tambahan dan cukai oleh beberapa responden. Responden individu adalah semua pegawai kastam. Pengimportan kenderaan melibatkan pelabuhan dan tempat perniagaan di Selangor dan Sarawak. Terdapat lima kes berasingan/insiden/aduan yang terlibat. Pemohon mendakwa, antara lain: (a) perintah certiorari untuk dibawa masuk ke mahkamah dan membatalkan keputusan responden masing-masing untuk menyita 17 unit kenderaan bermotor yang dimiliki oleh pemohon; (b) perintah certiorari untuk dibawa masuk ke mahkamah dan membatalkan tawaran kompaun yang dibuat oleh responden masing-masing dalam Kes No 1, Kes No 2, Kes No 3 dan Kes No 4; (c) perintah certiorari untuk dibawa masuk ke mahkamah dan membatalkan keputusan responden kesembilan untuk mengeluarkan 15 bil tuntutan dalam Kes No 5; dan (d) perintah mandamus mengarahkan responden membayar balik wang yang dibayar oleh pemohon di bawah lima kes dan melepaskan 17 kenderaan bermotor yang disita di bawah lima kes. Alasan pemohon untuk permohonan tersebut adalah bahawa penyitaan kenderaan bermotor dan tawaran kompaun untuk kesalahan itu adalah menyalahi undang-undang dan dilakukan dengan melanggar undang-undang dan bahawa penerimaan tawaran dan pembayaran kompaun oleh pemohon adalah disebabkan oleh paksaan dan/atau pengaruh tidak wajar dari beberapa responden.

Diputuskan, menolak permohonan untuk semakan kehakiman:

(1) Terdapat kenyataan yang jelas oleh deponen beberapa afidavit yang difailkan bagi pihak responden bahawa terdapat sebab yang munasabah untuk mengesyaki bahawa pemohon telah melakukan kesalahan di bawah Akta Kastam 1967 ('Akta'). Oleh itu, mahkamah tidak menemui apa-apa yang tidak diingini atau menyalahi undang-undang dalam menjalankan kuasa mereka di bawah s 114(1) Akta untuk menyita kenderaan (lihat perenggan 15–16).

(2) Berikutan penyiasatan, responden menawarkan untuk mengkompaun kesalahan yang dibuat menurut peruntukan Akta dan Peraturan-Peraturan Kastam 1977. Pemohon telah menerima tawaran kompaun untuk Kes No 1, Kes No 3 dan Kes No 4 dan membayar kompaun sepenuhnya. Penerimaan sedemikian adalah menjadi pengakuan bersalah setakat mana kesalahan berkenaan. Jika pemohon tidak melakukan apa-apa kesalahan di bawah Akta, maka ia tidak sepatutnya menerima tawaran untuk mengkompaun kesalahan itu dan

membayar denda, dan sebaliknya ia sepatutnya mencabar penyitaan atau perampasan kenderaan di mahkamah undang-undang. Setelah gagal berbuat demikian, adalah sudah terlambat untuk mencabar penyitaan, pembayaran kompaun dan perampasan kenderaan dengan kenyataan yang lemah dan tidak berasas dari paksaan dan pengaruh tidak wajar (lihat perenggan 19–20).

(3) Pemohon telah merayu kepada Menteri untuk melepaskan kenderaan itu, dan Menteri menetapkan syarat untuk pembebasan kendaraan, iaitu, pembayaran cukai dan duti tambahan diselesaikan oleh pemohon. Pemohon gagal membayar cukai dan duti tambahan ini. Pemohon juga gagal mengemukakan permit yang diluluskan yang sah untuk pengimportan kenderaan-kenderaan ini. Oleh itu, perampasan kenderaan itu adalah mengikut undang-undang dan dalam kuasa statutori di bawah Akta (lihat perenggan 21).

(4) Berhubung dengan Kes No 5, 15 bil tuntutan adalah berdasarkan kepada nilai sebenar kenderaan yang telah disemak semula, yang menunjukkan duti dan cukai sebenar yang perlu dibayar. Responden mempunyai kuasa untuk berbuat demikian di bawah s 17(1) Akta, s 30 Akta Cukai Jualan 1972 dan s 15(1) Akta Eksais 1976. Pemohon telah menyelesaikan pembayaran semua 15 tuntutan yang disemak untuk duti dan cukai tanpa sebarang protes. Pemohon dalam surat rayuannya kepada Menteri tidak menyangkal bahawa ia telah mengisytiharkan nilai barangan pada nilai yang kurang 15 kenderaan tersebut. Oleh itu, tindakan yang diambil oleh responden dalam hal ini adalah dalam kuasa mereka yang diberikan oleh undang-undang (lihat perenggan 22).

(5) Keputusan responden berkenaan dengan penyitaan kenderaan, tawaran untuk mengkompaun kesalahan, pengenaan duti/cukai yang telah disemak dan perampasan kenderaan itu bukanlah keputusan pentadbiran, tetapi keputusan yang dibuat dalam perjalanan siasatan jenayah dan menjadi sebahagian daripada prosiding jenayah. Oleh itu, forum yang sesuai bagi pemohon untuk mencabar keputusan ini akan berada di dalam bidang kuasa jenayah mahkamah yang sesuai. Oleh itu, keputusan yang dipersoalkan untuk dicabar tidak boleh diterima untuk semakan kehakiman (lihat perenggan 25–26).]

Notes

For a case on seizure of vehicle, see 6(1) *Mallal's Digest* (5th Ed, 2015) para 231. For cases on application for judicial review, see 1(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 329–407.

Cases referred to

City Growth Sdn Bhd & Anor v The Government of Malaysia [2006] 1 MLJ 581; [2005] 7 CLJ 422, HC (folld)

Government of Malaysia v Lim Kit Siang United Engineers (M) Berhad V Lim Kit Siang [1988] 2 MLJ 12; [1988] 1 CLJ 219, SC (refd)

Legislation referred to

Anti Money Laundering Act 2001 s 50
Criminal Procedure Code
Customs Act 1967 ss 17(1), 78, 78(1), 114(1), 129, 131, 131(2A), (3)(b)(ii), 133, 135, 135(1)(g)
Customs Regulations 1977 reg 67
Excise Act 1976 s 15(1)
Sales Tax Act 1972 s 30

Hamizi Mohd Yusof (Raziyan Rahim & Assoc) for the applicant.
Hani Aziza bt Ismail (Selangor State Legal Advisor's Office) for the respondent.

Vazeer Alam J:

[1] This is an application for judicial review. The facts are as follows. The applicant is in the business of importing motor vehicles into the country. The applicant's complaint relates to the seizure of several motor vehicles imported by the applicant as well as the imposition of compound for offences committed by the applicant in the process of the importation of these vehicles and also in respect of the imposition of additional duties and taxes by several of the respondents. The individual respondents are all Customs Officers. The importation of the vehicles involves ports and places of business in Selangor and Sarawak. There are a total of five separate cases/incidents/complaints involved in this application.

CASE NO 1

[2] On 24 April 2012, 25 April 2012 and 30 May 2012, a team of Customs Officers from the Selangor Customs Enforcement Division had seized four motor vehicles, namely, an Audi A5, a BMW 535i, an Audi Q7 and a Mercedez Benz, at the applicant's business premises at Lot 7396, Jalan SS20/1, Damansara Utama, 47400 Petaling Jaya. The seizure was made on reasonable suspicion that offences under the Customs Act 1967 had been committed. The requisite statutory notice of seizure was given to the applicant's representative at the business premises.

[3] Also seized were ownership and customs documents pertaining to five other motor vehicles. However, the physical seizure of these five motor vehicles could not be carried out as these five vehicles had already been sold by the applicant to third parties.

A **[4]** Thereafter, following investigations, it was found that the applicant had incorrectly stated the year of manufacture of these vehicles in the relevant customs declaration forms, which was an offence under s 133(1)(a) of the Customs Act 1967.

B **[5]** The fourth respondent made an offer to compound the offences at RM3,000 for each offence. The applicant accepted that offer and paid a total of RM27,000 in compound fine for the nine offences under s 133(1)(a) of the Act concerning the nine vehicles.

C **[6]** The applicant had then appealed to the Minister of Finance, as is provided in s 129 of the Customs Act 1967, vide letter dated 23 April 2012, against the decision of the respondent concerned to impound the vehicles. In that letter of appeal to the Minister, whilst acknowledging that an offence had
D been committed and offering to pay any additional duties and compound, the applicant had requested for the release of the vehicles that had been seized. After consideration, the appeal was allowed by the Minister on condition that the applicant paid the full customs duties and penalties amounting to RM1,638,294.35. However, the applicant did not fulfill these conditions and
E the vehicles were thus forfeited to the Royal Malaysia Customs and Excise Department.

CASE NO 2

F **[7]** On 6 September 2012, a team of Customs Officers from the Selangor Enforcement Division seized four motor vehicles imported by the applicant and stored at the warehouse of Northport Distripark Sdn Bhd, Jalan Pelabuhan Utara, 42000 Pelabuhan Klang, Selangor. This seizure was made on grounds of suspicion that an offence under the Customs Act 1967 had been committed.
G Investigations revealed that the Applicant had committed offences under s 135(1)(g) of the Customs Act 1967 and an offer to compound the offences was made to the applicant on 2 July 2014. The applicant appealed this offer to compound the offences, and subsequently, a second revised offer to compound was made on 31 July 2015, but the applicant chose not to pay the compound.

H

CASE NO 3

[8] On 9 January 2013, a team of Customs Officers from the Kuching Customs Enforcement Team had sealed and seized three shipping containers at
I Pelabuhan Senari, Kuching, Sarawak. Within the three containers were five motor vehicles, namely, two units of Audi Q5 TFS 1, two units of Audi Q5, and one unit of Audi Q7. Investigations revealed that the applicant had committed offences under s 135(1)(a) of the Customs Act 1967, as the age of these imported vehicles were found to be not in accordance with the conditions

stipulated in the Import Licences (JK69), the importation was found to have been done in contravention of the law. An offer to compound the offences in the sum of RM130,000 was made in accordance to the provisions of s 131(2A) of the Customs Act 1967. The applicant accepted the offer and paid the compound in full.

[9] Further investigations showed that the Customs Declarations Form 8 dated 30 April 2014 that was submitted by the applicant in respect of the importation of these five vehicles was made after the statutory period of 30 days upon arrival of the vessel at the port, which was on 10 November 2012. In this respect it was found that the applicant had committed an offence under s 78(1) of the Customs Act 1967, and an offer to compound the offence was made by the relevant authority and accepted by the applicant. The applicant had paid the compound in full.

[10] The applicant made an appeal to the Minister for the release of the five seized vehicles vide letter dated 24 April 2015. The Minister had made a conditional order for release upon payment of proper duties and taxes but the applicant failed to fulfill these conditions, and as a result, the Minister had ordered the forfeiture of these five vehicles.

CASE NO 4

[11] On 5 April 2013, another seizure of four imported motor vehicles was made on grounds that the applicant had used invalid Import Licences (JK69) to import these vehicles, which was an offence under s 135(1)(a) of the Customs Act 1967. The sixth respondent had made an offer to compound the offences at RM120,000. The applicant accepted the offer to compound and paid the compound sum of RM120,000 on 29 April 2014.

CASE NO 5

[12] On 13 December 2013, the ninth respondent had imposed additional customs duty on 15 units of motor vehicles that had already undergone customs clearance sometime before that. The total amount of duty imposed in these 15 bills of claim was RM2,343,169.78, which was done in accordance to s 17(1) of the Customs Act 1967, s 30 of the Sales Tax Act 1972 and s 15(1) of the Excise Act 1976. The applicant paid the full sum of RM2,343,169.78.

THE APPLICANT'S CLAIM FOR RELIEF

[13] The applicant claims, inter alia, the following relief:

(a) an order of certiorari to bring into court and quash the decision of the respective respondents to seize the above stated 17 units of motor vehicles belonging to the applicant;

(b) an order of certiorari to bring into court and quash the offer of compound made by the respective respondents in Case No 1, Case No 2, Case No 3 and Case No 4;

(c) an order of certiorari to bring into court and quash the decision of the ninth respondent to issue the 15 bills of claim totaling RM2,343,169.78 in Case No 5;

(d) an order of mandamus directing the appropriate respondent to:

(i) refund the monies paid by the applicant under the five cases amounting to RM2,640,169.78; and

(ii) release the 17 motor vehicles seized under the five cases;

(e) interest and cost.

[14] The applicant's grounds for the application are:

(a) that the seizure of the motor vehicles is unlawful and done in contravention of statute;

(b) that the offer of compound for Case No 1, Case No 2, Case No 3 and Case No 4 is wrong in law and done in contravention of the provisions of the Customs Act 1967, and that the acceptance of the offer and payment of the compound by the applicant was occasioned by duress and/or undue influence of some of the respondents; and

(c) the additional claims for duties made under Case No 5 is wrong in law as all the vehicles had already undergone the process of customs clearance and all duties and taxes imposed had been paid in full during the process of importation and these vehicles had already been sold.

ANALYSIS OF ARGUMENTS AND COURT'S DECISION

[15] In respect of the seizure of the vehicles, the power of seizure is found in s 114(1) of the Customs Act 1967, which reads:

> (1) All goods in respect of which there has been, or there is, *reasonable cause to suspect that there has been committed any offence against this Act* or any regulation made thereunder, or any breach of any of the provisions of this Act or of any regulation made thereunder or of any restriction or condition subject to or upon which any licence or permit has been granted, together with any receptacle, package, conveyance, vessel not exceeding two hundred tons nett registered tonnage, or aircraft other than an aircraft engaged in international carriage, in which the same may have been found or which has been used in connection with such offence or

breach, and any books or documents which may reasonably be believed to have a bearing on the case, *may be seized by any officer of customs* in any place either on land or in territorial waters.

Thus, pursuant to s 114(1) of the Customs Act 1967, any customs officer having reasonable cause to suspect that there has been committed an offence under the Act may seize goods in respect of which the offence had been committed. In Case No 1, Case No 2, Case No 3 and Case No 4. There is clear averment by the deponents of the several affidavits filed on behalf of the respondents that there was reasonable cause to suspect that the applicant had committed offences under the Customs Act 1967. In Case No 1, investigations revealed an offence under s 133(1)(a) of the Act having been committed. In Case No 2, it was an offence under s 135(1)(g) of the Act. In Case No 3 and Case No 4 an offence under s 135(1)(a) is shown. Further, the applicant had paid the compound for Case No 1, Case No 3 and Case No 4.

[16] Hence, from the evidence and facts adduced, I do not find anything untoward or illegal in the respondents' exercise of their powers under s 114(1) of the Act to seize the vehicles.

[17] On the issue of the compound paid by the applicant, I find that the respective issuing officer had the power to do so under s 131 of the Customs Act 1967 that provides:

(1) Any senior officer of customs may compound any offence, which is prescribed to be a compoundable offence, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding five thousand ringgit.

(2) In like manner the proper officer of customs, not being a senior officer of customs, may compound any offence which is prescribed to be compoundable by such officer, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding one hundred ringgit.

(2A) In addition to the power to compound in subsection (1), the Director General may compound any offence under subsection 135(1) by accepting from the person reasonably suspected of having committed such offence —

(a) in the case of dutiable goods, a sum of money which shall be a sum not more than ten times the customs duty; and

(b) in the case of prohibited goods, a sum of money which shall be a sum not more than ten times the value of the goods.

Further, reg 67 of the Customs Regulations 1977 provides:

(1) A senior officer of customs may, in his discretion, compound any offence under sections 133(1), 135(1) and 138 of the Act and any offence under these Regulations in accordance with section 131(1) of the Act:

A Provided that the fine shall not be more than twenty times the amount of the customs duty payable on the goods.

[18] The respondents' investigations had shown an offence under s 133(1)(a) of the Act being committed by the applicant in respect of Case No 1. Section 133(1)(a) of the Act states:

(1) Whoever —

(a) makes, orally or in writing, or signs any declaration, certificate or other document required by this Act which is untrue or incorrect in any particular;

...

shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

As for Case No 2, the investigations disclosed an offence under s 135(1)(g) of the Act that reads:

(1) Whoever —

(g) is in any way knowingly concerned in any fraudulent evasion or attempt at fraudulent evasion of any customs duty, or in evasion or attempt at evasion of any prohibition of import or export;

shall be guilty of an offence and shall, on conviction —

...

Whilst for Case No 3 and Case No 4, the offences are under s 135(1)(a) of the Act, which reads:

(1) Whoever —

(a) is concerned in importing or exporting any uncustomed goods or any prohibited goods contrary to such prohibition whether such uncustomed or prohibited goods be shipped, unshipped, delivered or not;

shall be guilty of an offence and shall, on conviction —

...

There was also an additional charge for Case No 4, under s 78(1) of the Act, that reads:

(1) Every importer of dutiable goods, warehoused under section 66 or exempted from being warehoused by virtue of paragraph (a) of the proviso shall, before removal of such goods or any part thereof from customs control or if such goods are not removed within a period of one month from the date on which they were landed, within such period, make personally or by his agent to the proper officer of customs at such warehouse, a declaration, substantially in the prescribed form, of the goods imported, and in any particular case the proper officer of customs may, by notice in writing, require the importer either personally or by his agent to submit such declaration within three days of the receipt of such notice, and the importer shall be required to comply with such notice if it is within his power to do so:

Provided that in the case of goods imported by road such declaration shall be made on arrival of such goods at the place of import.

[19] Following investigations, and upon the respondents being satisfied that offences under the Act had been committed, offers to compound the offences were made pursuant to the provisions of the Act and the Regulations referred to earlier. The applicant had a choice of accepting the offer to compound the offence, or rejecting it, and appearing in court to challenge the charges. The applicant did not elect to appear in court to challenge the charges. Instead, the applicant chose to accept the offer of compound for Case No 1, Case No 3 and Case No 4 and paid the compound in full. Such acceptance amounts to an admission of guilt in so far as the offences are concerned.

[20] The applicant had also appealed to the Minister the decision of the respective respondent to forfeit the vehicles. And in the written representation to the Minister, the applicant had admitted to the various offences which form the substance of the compound and confirmed the acceptance of the offer of compound without any protestation. The Minister had made a conditional order of release of the vehicles upon payment of the additional duties and taxes. Now, if the applicant did not commit any offence under the Customs Act, then it need not have accepted the offer to compound the offences and paid the fine, and instead it should have challenged the seizure or forfeiture of the vehicles in a court of law. Having failed to do that, it would now be too late in the day to challenge the seizure, payment of compound and forfeiture of the vehicles on flimsy and unsubstantiated averments of duress and undue influence.

[21] In respect of the applicant's application for return of the vehicles, I find that the respondents had acted well within their powers to forfeit them. The importation of these vehicles are subject to the applicant having the appropriate licenses or approved permits ('AP'). The conditions of the AP states that the vehicles must be less than a year old, whereas the evidence shows that the vehicles were more than a year old. Thus, the customs declaration was not in conformity with the terms of the APs that the applicant had submitted. The applicant was given time to produce the appropriate APs that would correspondent to the age of the imported vehicles, but failed to do so within the time given. Thus, the appropriate respondent had issued the offer to compound the offences, which was accepted by the applicant. Now, s 131(3)(b)(ii) of the Customs Act provides that when the offender has paid the compound, the goods that form the substance of the offence shall be forfeited if a proper licence for the importation of the goods is not issued by the relevant authority within the stipulated time. Section 131(3)(b)(ii) of the Act reads:

(3) On the payment of such sum of money —

(a) the person reasonably suspected of having committed an offence, if in custody, shall be discharged and no further proceedings shall be taken against such person; and

(b) any property seized shall be released and no further proceedings shall be taken against such property except that —

(i) if the property seized consists of dutiable goods, such goods or the amount secured under paragraph 115(1)(a) or (b) or the amount realized by sale under paragraph 115(1)(c), as the case may be, *shall only be released after payment of the customs duties payable;* and

(ii) if the property seized consists of prohibited goods, such goods or the amount secured under paragraph 115(1)(a) or (b) or the amount realized by sale under paragraph 115(1)(c), as the case may be, shall be forfeited:
Provided that where the prohibition is conditional upon a licence being issued, a senior officer of customs may release such goods if a licence is issued by any relevant authority within thirty days from the date such sum of money is paid.

In the present case, the vehicles were legally seized under s 114(1) for committing an offence under ss 78, 133 and 135, and validly detained under s 131 of the Act and until customs duty payable is paid. Further, the applicant had appealed to the Minister for the release of the vehicles, and the Minister had set a condition for the release of the vehicles, namely, that the payment of additional taxes and duties be settled by the applicant. The applicant had failed to pay these additional taxes and duties. The applicant also failed to produce valid APs for the importation of these vehicles. Hence, I find that the forfeiture of the vehicles is in accordance to law and well within the statutory powers under the Act.

[22] Now, in respect of Case No 5, my findings and decision are as follows. The applicant contends that the duties and taxes raised in the 15 separate bills of claim have already been paid when the vehicles went through customs clearance, and that this claim for additional duties and taxes is unlawful. The respondents contend otherwise. The respondents state that these 15 bills of claim arise from under declaration in respect of the value of the said vehicles made by the applicant at the time of timportation, which had resulted in lesser duties and taxes being levied in the first place. The 15 bills of claim are based on the revised actual value of these vehicles, which shows the actual duties and taxes payable. The respondents have the power to do so under s 17(1) of the Customs Act 1967, s 30 of the Sales Tax Act 1972 and s 15(1) of the Excise Act 1976. The applicant had settled payment of all these 15 revised claims for duties and taxes, without any protestation. And in fact, the applicant in its appeal letter to the Minister does not refute that it had under-declared the value of these 15 vehicles. Hence, I find that the action taken by the respondents in this regard is well within their powers accorded by law.

[23] A further point of fundamental importance has been raised by learned counsel for the respondents and it merits consideration. The learned senior federal counsel has correctly stated that matters pertaining to compounding of criminal offences are not administrative decisions that are susceptible to judicial review. Under s 131 of the Customs Act, the power to compound and the amount of compound are discretionary powers which are exercisable by the appropriate officer of customs. The respondents had carried out investigations and concluded that certain offences under the Act had been committed and offered to compound these offences as is provided in s 133 of the Act.

[24] It is well settled that matters pertaining to an offer of compounding offences are part and parcel of enforcement of criminal law, which is beyond the jurisdiction of civil courts. The Federal Court had reemphasised this principle in *Government of Malaysia v Lim Kit Siang United Engineers (M) Berhad V Lim Kit Siang* [1988] 2 MLJ 12; [1988] 1 CLJ 219 (FC) where it was held that criminal law should not be enforced by means of civil proceedings.

[25] Similarly, in *City Growth Sdn Bhd & Anor v The Government of Malaysia* [2006] 1 MLJ 581; [2005] 7 CLJ 422, in construing whether an order of seizure of property made by a deputy public prosecutor pursuant to s 50 of the Anti Money Laundering Act 2001, was amendable to judicial review, Raus Sharif J (as he then was) had stated that:

> Looking at the order of the deputy public prosecutor as well as the provision of s 50(1) of the AMLA, I am of the view that the order of the deputy public prosecutor is not reviewable under O 3 of the RHC. To me, s 50(1) of the AMLA is part and parcel of the investigation process into an offence under s 4(1) of the AMLA. It appears that in order to facilitate the investigation into the offence of money laundering, the law has provided with the public prosecutor the power to assist the investigating officer. Clearly, s 50(1) of the AMLA was enacted to enable the public prosecutor or his deputy to make an order of seizure of movable properties in the possession of the financial institutions by ordering the financial institutions not to part, deal in, or otherwise dispose of such property or any part of it until the order is revoked or varied. Thus, by issuing the said orders the Deputy Public Prosecutor was merely exercising a function under the AMLA.
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> It has been said before that not all decisions and action of a public officer is reviewable by the court. In *R v Sloan* [1990] 1 NZLR 474, Justice Hardie Boys said:
>
> > ... it is not every decision made under statutory authority that is subject to judicial review. A decision must go beyond what is merely administrative or procedural ... or the exercise of a function rather than a power ... Quite plainly, the conclusions reached by the inspector here are of this kind and so are not reviewable. To hold otherwise would, as Mr Neave submitted, open up the investigation process of all law enforcement agencies to constant judicial review; and that cannot have been the intention of Parliament.
>
> Similarly, in *Ahmad Azam bin Mohamad Salleh & Ors v Jabatan Pembangunan Koperasi Malaysia & Ors* [2004] 4 MLJ 86 I held that the public officers exercising

A a function under the Cooperative Societies Act 1993, is not reviewable under O 53 of the RHC.

Likewise in this case, the order of the deputy public prosecutor under s 50(1) of the AMLA is also not reviewable. This must be so, otherwise if all decisions and action of public authority of this nature are amendable to court's review, then the B government machinery may not be able to function smoothly. The investigation process of all law enforcement agencies will be open to constant judicial review. To borrow the words of Justice Hardie Boys in *R v Sloan* 'that cannot have been the intention of Parliament'.

C Hence, applying these principles of law to the present set of factual circumstances, I find that the decision of the respondents in respect of the seizure of the vehicles, the offer to compound the offences, the imposition of revised duties/taxes and the forfeiture of the vehicles are not administrative decisions, but are decisions made in the course of criminal investigations and forms part and parcel of criminal proceedings. Hence, the appropriate forum D for the applicant to challenge these decisions would be within the criminal jurisdiction of the appropriate courts.

E **[26]** A civil court cannot interfere and set aside the compound paid by the applicant in respect of criminal offences said to have been committed by the applicant, as these would have arisen in the course of enforcement of criminal law. If indeed the applicant was under undue influence or duress in accepting the offer to compound the offences and making payment of the compound, the applicant ought to have availed itself of the procedures contained in the Criminal Procedure Code, and criminal law generally, to exercise its rights and F apply to set aside the seizure, compounds, forfeiture and defend the charges against the applicant. Thus, to that extent, I agree with submissions of learned senior federal counsel that the impugned decisions sought to be challenged in this proceedings are not amenable to judicial review.

G **[27]** Wherefore, I dismissed this application for judicial review.

Application for judicial review dismissed.

H Reported by Ahmad Ismail Illman Mohd Razali

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